IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8358 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MADHAVJI GOVINDJI GOHIL SINCE DEC. THRO.L.R.

Appearance:

1. Special Civil Application No. 8358 of 2003

MRS VASAVDATTA BHATT for Petitioner No. 1

MR PANKAJ R DESAI for Respondent No. 1-1/3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 13/04/2004

ORAL JUDGEMENT

Rule. Mr. Desai waives service. With the consent of the parties, the matter is taken up for final

hearing today.

The short facts of the case are that the original respondent was an employee of petitioner Corporation holding the post of conductor. It is the case of the petitioner that during inspection and checking an amount of Rs. 134/- was found as surplus cash and the said amount was collected from the passenger, but the tickets were not issued, the departmental inquiry was held and at the conclusion of the enquiry, the charges were proved. The disciplinary authority imposed punishment of dismissal from service. The respondent raised dispute which ultimately came to be referred to the Labour Court for adjudication, being Reference (LCN) No. 96 of 1998. The Labour Court adjudicated the reference and found that the workman has reached to the age of superannuation on 3.9.2001. However, the Labour Court considered that the workman, prior to the misconduct in question, has put up about more than 27 years of service and in the proceedings before the Labour Court, it was recorded that the charges were not proved in the Departmental enquiry because the alleged stop of village Pandad is not provided in the route and the Labour Court found that the defence of the workman is not properly considered. The Labour Court also considered the matter under Section 11A of the Industrial Disputes Act, and ultimately passed the award for substitution of the penalty by not awarding backwages from the date of dismissal, until the employee reached to the age of superannuation and ordered that the decision of dismissal shall be converted as discharge from the service with effect from 2.3.1997 and it is the said award passed by the Labour Court which is under challenge in this petition.

Pending the petition the workman concerned has expired and the legal heirs of workman are brought on record as respondents Nos. 1/1 to 1/3.

I have heard Ms. Vasavadatta Bhatt for the petitioner and Mr. Desai appearing for the legal heirs of the workman concerned. The learned Counsel appearing for the petitioner submitted inter-alia that the surplus cash was found from the cash box of the conductor and it could be said to be the case of misappropriation. She also submitted that the workman was in past dismissed from service for similar instances of misconduct, vide order Nos. 4932 and 947 from Rajkot Division and vide order No. 3566 from Ahmedabad Division. It has been submitted that the aforesaid past record of the workman concerned is not considered by the Labour Court and in any event, no punishment has been imposed upon the

workman for the misconduct in question as the dismissal is converted into discharge simpliciter.

The learned Counsel appearing for the respondent Mr. Desai submitted that as such the past record of the workman was not produced before the Labour Court, nor the same was produced before the disciplinary authority. He submitted that the workman, in any case reached to the age of superannuation pending the proceedings before the Labour Court and has also expired. He also submitted that as per the proceedings before the Labour Court, the charges are not proved and the Labour Court has modified the order of dismissal by termination simpliciter, which would enable the workman to get the benefit of the period of his service for about more than 27 years and he submitted that the matter does not call for interference. However, Mr. Desai, learned Counsel appearing for the respondent declared before the Court that in case if the Court is inclined to consider the matter for imposition of punishment upon the workman, since the workman has expired and legal heirs of the deceased workman are waiting the retiral benefits, the respondents are agreeable if reasonable amount of gratuity, which may be available to the workman concerned on account of conversion of the order as discharge simpliciter, is forfeited. Mr. Desai also submitted that if the award of the Labour Court is modified, the respondents are agreeable for the same.

Having considered above, it is required to be noted that there is a past record of the workman of similar misconduct and the history is of imposition of similar punishment of dismissal. There is no denial to the statement made by the petitioner in the petition, in the affidavit of the respondent workman concerned. If such is the situation, then in my view the said aspects of past record of the workman concerned cannot be ignored by this Court even if the matter is to be considered for examining the legality and validity of the award.

The Labour Court has recorded that the charges are not proved. However, a perusal of the award passed by the Labour Court shows that the Labour Court has given self-contradictory finding, inasmuch as on the one hand at paragraph 7 it has recorded that the finding at the enquiry are not proved from oral statement which cannot be believed, on the other hand it has recorded that while considering the matter reply submitted to the show cause notice is not properly considered. As such it was expected of the Labour Court to give a concluded finding as to whether the finding of the enquiry officer are

perverse or not. The Labour Court further has exercised the power under Section 11-A for substitution of the punishment.

The exercise of power under Section 11-A for substitution of the punishment would be on the basis that the misconduct to some extent is proved and then only the Court will have to undertake the exercise whether the punishment is disproportionate to the misconduct or not. The fact that the Labour Court has exercised power under Section 11A is sufficient to consider that the Labour Court has found that the misconduct is proved to some extent.

I would have considered the matter for remanding the case to the Labour Court for readjudication of the case, but in view of the peculiar circumstances that the workman has expired, it may not be possible for the legal heirs of the workman to face the proceedings once again. Further, since the legal heirs of the deceased workman who are respondents herein have also agreed for acceptance of the reasonable punishment of forfeiture of some portion of the gratuity, I find that considering the peculiar circumstances instead of remanding the matter to the Labour Court for further adjudication, the matter may be considered by this Court for substitution of the penalty. As such the Labour Court has substituted penalty by converting the order of dismissal into the discharge simpliciter, but such order cannot be said to be imposing penalty upon the workman concerned in real sense. As a consequence of the order passed by the Labour Court, the workman would be entitled to all retiral benefits as if he retired from service from 2.3.1997. Non-awarding of the backwages, in my view, would not be a sufficient punishment, more particularly when the workman had a past record of indulging into similar misconduct. The matter could have viewed differently for imposition of heavier punishment had the workman ordered to be reinstated in service by the Labour Court or had the workman been alive. In the present case, since the workman is not surviving on the date when this Court considers the matter, I find that considering the peculiar facts and circumstances the interest of justice would be met if in addition to the order passed by the Labour Court, the penalty is imposed upon the workman concerned of forfeiture of 25% gratuity amount. Since the learned Counsel appearing for the respondent has even otherwise agreed for such penalty, I find it proper to leave the matter at that stage without observing further on the said aspect.

In view of the above, award dated 14.8.2002 passed by the Labour Court, Nadiad in Reference (LCN) No. 96/98 is modified to the extent that in addition to the conversion of the order of dismissal into discharge simpliciter, the penalty of forfeiture of 25% of the gratuity amount is imposed upon the workman concerned. The petition is allowed to the aforesaid extent. Rule is made absolute. Considering the facts and circumstances, no order as to costs.

Mr. Desai, learned Counsel for the respondent submitted that the petitioner may be directed to pay the amount as modified by this Court within some reasonable time in accordance with law, so that the legal heirs of the deceased workman can have the financial benefit. Considering the facts and circumstances, since the matter pertains now for payment of the retiral dues of deceased workman, the petitioner Corporation shall make the payment as early as possible, preferably within a period of 3 months from the date of receipt of writ of this order.

(Jayant Patel, J.)
*/Mohandas